U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW YORK Date: APR 29 2009
MSC 06 088 17005

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, New York. The decision is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period. In so finding, the director noted:

> On April 27, 2006, this office received evidence from you in support of your application. The information and documentation you submitted are insufficient to overcome the grounds for denial for the reasons herein described. Into evidence you submitted three (3) new affidavits. You also submitted photocopies of Bangladesh passport number [redacted], several receipts, medical notes, an envelope, and a letter from the [redacted]
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> The affidavits from [redacted] and [redacted] do not meet the criteria of a credible affidavit as described in the Notice of Intent to Deny, as they do not include evidence that the affiants were present in the United States during the statutory period. Further, they are not amenable to verification. Title 8 C.F.R. 245a.2(d) states in part, "Applications submitted with unverifiable documentation may be denied." The Service attempted to contact all of the affiants on April 6 and April 19, 2007 but was unsuccessful as there was no answer at the provided telephone numbers. A message was left on the answering service of the [redacted] on April 6, 2007; to date no response has been received.
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> Although page seventeen (17) bears a visitor's visa (B2) that was issued on June 29, 1981 in Dacca, there is no entry stamp into the United States. It is noted that all the pages of the passport were not submitted for review. The receipt from [redacted] Store is considered to have been deceptively created. The receipt is dated June 29, 1982. The area codes listed for the Brooklyn and Bronx locations are listed as 718. The 718 area code was not in use in Brooklyn until 1984 and not in the Bronx until 1992. This casts doubt on the veracity of your testimony and the other documents you have submitted in order to prove residence.

On appeal, the applicant states she has been an undocumented alien since she entered the United States and indicates that she has submitted all of the documents bearing her name in support of her application. She explains that she has never been arrested or convicted and that her late husband

was the primary household owner at that time so she is unable to present any utility bills in her name. The applicant states that the director found that she did not submit all the pages of her lost passport [redacted]. She further states that she submitted the original copy of a police record of that lost passport, and that since it was lost, she could not provide all of the pages of that passport, including the one showing her entry stamp into the United States. The applicant argues that the director's assumption that the [redacted] receipt is considered to have been created is absolutely not true.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine the evidence

for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

The pertinent evidence in the record is described below.

1. A notarized statement from who states he has known the applicant since 1981

2. A notarized statement from [redacted] who states he has known the applicant since October 1981.

3. Two notarized statements from [redacted], who states he has known the applicant since November 1981 and that she became his assistant at his "clinical chamber" in 1989.

4. A notarized statement from [redacted] who states that he knows the applicant "came to the USA as an EWI on 10/1981."

5. Pages 1, 2 and 4 of an unsigned "CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants," from [redacted] who states that he first met the applicant and her husband in November 1981, and that he knows that the applicant had entered the United States by air at JFK Airport in New York.

6. A notarized statement from [redacted] who states that he knows the applicant "came to the USA as an EWI on 10/1981."

7. Pages 1, 2 and 4 of an unsigned CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants, from [redacted] who states that her mother told her that the applicant had entered the United States by air in New York prior to 1982.

8. A notarized statement from [redacted] who states that she has known the applicant since 1984 and she known the applicant "came to the USA as an EWI on 10/1981."

9. Pages 1 thru 4 of an unsigned CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants, from [redacted] who states that the applicant told her that she had entered the United States by air at "JFK/NY" prior to 1982.

10. A lease agreement between [redacted], as owner, and [redacted], the applicant's deceased husband, as tenant, for a property in Brooklyn, New York, for the period beginning October 10, 1981 and ending on December 31, 1983.

11. The applicant's monthly rent receipt from for the period ending December 31, 1981.

12. A notarized statement from who states she has known the applicant since 1983.

13. An Affidavit of Witness from who states he has known the applicant since January 1984.

14. A letter from [redacted], In New York, stating that the applicant was examined by him sometime in April 1982 and that she has been under his medical care until March 27, 1987.

15. A letter from [redacted]. in New York who states that he has known the applicant since 1982.

16. A letter from [redacted]. New York who states that he has known the applicant since 1982.

17. The applicant's receipt from [redacted] dated June 29, 1982.

18. The applicant's receipt from [redacted] dated October 4, 1986.

19. The applicant's receipt from [redacted] dated July 15, 1987.

20. An envelope sent by a person in Bangladesh to the applicant in Brooklyn, New York, postmarked December 19, 1983.

21. An envelope sent by the applicant to a person in Bangladesh postmarked October 19, 1987.

Without corroborative evidence, notarized statements from acquaintances (Items # 1 through # 3, # 12 and # 13 above) do not substantiate clear and convincing evidence of an applicant's residence in the United States.

On her Form I-687 that she signed on December 26, 1990 and on her current Form I-687, the applicant stated that the only absence that she had from the United States back to January 1, 1982 was a visit to Canada from August 8, 1987 to August 20, 1987. On April 27, 2006, in response to the director's Notice of Intent to Deny dated March 29, 2006, the applicant submitted some of the pages from her passport # [redacted] Page 17 of the passport shows she was issued a multiple entry B-2 visa to visit the United States by a consular officer in Dacca, Bangladesh, on June 29, 1981. Page 15 shows that she entered the United Kingdom at Heathrow on July 17, 1981. The director noted that "although page seventeen (17) bears a visitor's visa (B2) that was issued on June 29, 1981 in Dacca, there is no entry stamp into the United States." On appeal, the applicant states that she did not submit all the pages of her lost passport [redacted] She further states that she submitted the original copy of a police record of that lost passport, and that since it was lost, she could not provide all of the pages of that passport, including the one were showing her entry stamp into the United States.

The record contains a copy of a complaint #[redacted] dated June 17, 1987, with the 75th Precinct of an unnamed police department for the offense of "burglary-included Passport # [redacted]" The complaint does not identify passport # [redacted] which is the document referred to by the director in her decision. **The applicant had her passport # [redacted] in hand on April 27, 2006. She has** submitted no evidence supporting her assertion that she lost that passport subsequent to that date. The record reflects that the applicant was abroad on July 17, 1981. Had she come to the United States by October 1981 as claimed, her passport would have contained an entry stamp into the United States and that information would have been contained on one of the pages in her passport # [redacted] Additionally, the applicant has submitted documentation to support her claim that she entered the United States in October 1981 without inspection at John Fitzgerald Kennedy Airport in New York (Items # 4 thru # 9). The applicant has provided no information as to how she was able to avoid inspection at that airport, as it is a relatively secure facility. Additionally, she has not explained why she would enter without inspection when her passport [redacted] contained a valid multiple entry nonimmigrant visitor visa issued on June 29, 1981 which was valid until June 29, 1982.

The director considered the receipt from [redacted] (Item # 17) to have been deceptively created because the receipt is dated June 29, 1982 and the area codes listed for the Brooklyn and Bronx locations are listed as 718. The director noted the 718 area code was not in use in Brooklyn until 1984 and not in the Bronx until 1992. On appeal, the applicant argues that the director's assumption that the [redacted] receipt is considered to have been created is absolutely not true. She submits no evidence to support her assertion or to refute the director's analysis concerning the area codes that were listed on the receipt. Even without the original receipt in hand, the copy of the receipt appears to have been altered. It is noted that the lease agreement (Item # 10) indicates that the tenant's immediate family consists of two persons; however, the applicant is not included on the lease by name nor is the document signed by her late husband. Additionally, the applicant's monthly rent receipt from [redacted] (Item # 11) appears to be altered.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant

must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of her assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's Form I-687 is not accompanied by evidence that she entered and resided in the United States since before January 1, 1982.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra*. Therefore, the applicant is ineligible for temporary resident status under section 245A of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility